

NEWTON, NEW HAMPSHIRE

ZONING BOARD OF ADJUSTMENT

**RULES OF
PROCEDURE**

ADOPTED JULY 12, 2021
AMENDED NOVEMBER 8TH, 2021

JOHN KOZEC – CHAIR

MICHAEL CONNOLLY – V. CHAIR

ROGER HAMEL

FRANK GIBBS

ALAN FRENCH

ZONING BOARD OF ADJUSTMENT

TOWN OF NEWTON, NEW HAMPSHIRE

RULES OF PROCEDURE

1.0 Authority

The Newton Zoning Board of Adjustment first adopted Rules of Procedure on July 12th, 2021, by virtue of the authority stated in New Hampshire RSA 676:1 and are filed with the Newton Town Clerk for public inspection.

2.0 Membership

All prospective members and alternate members of the Newton Zoning Board of Adjustment shall be residents of the Town of Newton (RSA 673:1). The Newton Zoning Board of Adjustment shall consist of five (5) members and up to five (5) alternate members unless that number shall be changed by the New Hampshire State Statute, or by the Town of Newton legislative body. Members shall be appointed by the Town Moderator and serve a statutory 3-year term.

3.0 Voting

Regular Members

All regular Zoning Board of Adjustment members are entitled to vote at meetings and public hearings unless they have recused themselves as an abutter to the public hearing or for a stated conflict of interest.

Alternate Members

Alternate members may participate in meeting deliberations and public hearings but are not entitled to vote unless they have been appointed as a voting member by the Chair in the event of absence or recusal of a regular member.

4.0 Officers, Employees, and their Duties

In accordance with RSA 673:8, the officers of the Zoning Board of Adjustment shall be a Chair and a Vice Chair, and they shall be elected annually at the first regularly scheduled meeting following Town Election so as to accommodate membership cycles. Officers shall be chosen by majority vote of those regular members present. All officers may be elected to succeed themselves (RSA 673:9).

4.1 Chair

The Chair shall conduct meetings and hearings, and designate alternates to replace absent members. The Chair shall vote in all cases where he or she does not have a conflict of interest.

The Chair's signature is sufficient for signing Notices of Decision and relevant Board correspondence, with authorization from the Board.

4.2 Vice Chair

The Vice Chair shall act in the capacity of the Chair, as and when the need arises. In the absence of the Chair, the Vice Chair may sign Notices of Decision and relevant Board correspondence, with authorization from the Board.

4.3 Administrative Assistant (AA)

In accordance with RSA 673:16, an Administrative Assistant may be employed to perform the administrative duties required of the Zoning Board of Adjustment. The Chair shall direct the Administrative Assistant's performance of the administrative duties.

The Administrative Assistant shall ensure the safe keeping of Board records and files; see that proper notice is given; proactively attend to other administrative details; and shall keep minutes of any meeting to include a summary of the facts on which any decisions are based, and the decisions which are thereafter rendered. Each member's vote on a question shall be recorded when Board unanimity is not obtained.

5.0 Minutes

Regular Minutes - Minutes of all Public Hearings and Meetings will be drafted and published by the Administrative Assistant for public review within 144 hours (5 days) and approved by the members of the Zoning Board of Adjustment at their next scheduled meeting. All tapes of minutes will be erased once the minutes are approved. (RSA 91:A:2 II)

Non-Public Minutes - Non-Public minutes will be drafted by the Administrative Assistant or other person designated by the Chair. If the Board votes to seal the minutes the Chair will review and initial in the lower right-hand corner of each page before being sealed and filed.

6.0 Conflict of Interest

No member of the Zoning Board of Adjustment shall participate in deciding, or shall sit upon the hearing of, any question which the Board is to decide if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if the member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member's official duties (RSA 673:14).

When uncertainty arises as to the application of the above to a Board member in particular circumstances, the Board shall, upon the request of that member, or another member, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to, or at, the commencement of any required public hearing. Such a vote shall be advisory and non-binding and may not be requested by persons other than Zoning Board of Adjustment members (RSA 673:14 II).

If a member is disqualified or unable to act in a particular case, pending before the board, the Chair shall designate an alternate to act in his or her place. The Chair shall announce any disqualification before discussion in a public hearing begins. The disqualified member or alternate member shall then remove him/herself from the Board table until discussion or the hearing is completed.

7.0 Quorum

A majority of the membership of the Newton Zoning Board of Adjustment shall constitute a quorum necessary in order to transact business at any meeting of the Board. The Chair shall designate an alternate member if any member is absent or disqualifies him/herself from sitting for a particular application.

8.0 Training

Zoning Board of Adjustment members are strongly encouraged to avail themselves of any and all training opportunities which may arise for their own professional development.

9.0 Scheduling of Meetings and Hearings

In accordance with RSA 673:10, the regularly scheduled Zoning Board of Adjustment meetings shall be held at 2 Town Hall Road **on the First Wednesday of the month at 7:30 PM.** (AMENDED NOVEMBER 8TH, 2021) Should the meeting lack a quorum, or

need to be rescheduled due to inclement weather, holiday, or other circumstances, the new meeting date will be held as soon as possible, with the new date and time.

One or more members of the Board are allowed to participate in the meeting or public hearings via electronic or other means of communications, subject to the provisions of RSA 91-A:2,III.

The yearly meeting calendar shall be adopted by the members of the Board after Town Meeting. Additional meetings may be scheduled as needs arise.

The Chair may call special meetings, provided that at least forty-eight (48) hours notice shall be given each member before a meeting is held.

10.0 Non-Public Sessions

The Zoning Board of Adjustment may meet in non-public session, provided all the provisions of RSA 91-A:3 are met (RSA 673:17).

11.0 Order of Business

- Call the meeting to order.
- Pledge of Allegiance.
- Designation of voting members.
- Scheduled public hearing agenda as presented by the Chair.
- Scheduled preliminary reviews as presented by the Chair.
- Review and acceptance of minutes from previous meeting(s).
- Board correspondence and other business.
- Adjournment

12.0 Submission of Applications and Notice of Public Hearing

The applicant must submit any proposed plan to the Board in accordance with the approved submission of materials deadline and meeting schedule. Upon receipt of an application the Board shall, at its next meeting, hold a preliminary review of the application for completeness and schedule it for a public hearing at its next scheduled meeting. At least five (5) days prior to the scheduled public hearing date, the Board shall notify the abutters to the applicant by certified mail, return receipt requested, of the date upon which the application will be formally heard by the Board.

Notice to the general public shall also be given at the same time by posting in two public places, one of which must be the ZBA's page on the Town's website and published in a local newspaper of general circulation (RSA 675:7).

12.1 Preliminary Review

The Board shall begin preliminary review of an application within 45 days after submission of the application. If the Board, through its preliminary public review has determined that it is a completed application, it shall proceed with a public hearing for it at its next regularly scheduled meeting. A detailed list of actions to be taken by the Board at a preliminary review shall be enumerated in Appendix A

12.2 Required Action on the Application

The Board shall act to approve or deny an application in a timely manner. A Notice of Decision shall be issued within 5 business days of the vote.

13.0 Procedure for Hearing the Agenda

13.1 Order on the Agenda

Applicants shall be scheduled in the order of the receipt of their applications, public hearings continued from a previous meeting will take precedence over new ones. A detailed list of actions to be taken by the Board at a public hearing shall be enumerated in Appendix B.

13.2 Call to order for each Public Hearing on the agenda by the Chair.

13.3 Presentation of the Plan

The applicant or a recognized agent shall present the application to the Board.

13.5 Discussion

Once presentation of the plan has been completed by the applicant and/or applicant's representative, Zoning Board of Adjustment members shall have the opportunity to ask only clarifying questions of the applicant.

When the Board members have completed their inquiries, the Chair shall ask whether there be any abutters or interested parties in favour of (first) and opposed (second) who wish to give input. Each person shall then be recognized, giving his/her name and address for the record, and permitted to ask questions and make comments through the Chair.

At this time the applicant will have an opportunity to withdraw his application should they so choose. Once all questions and comments have been

answered, the Chair shall close the public hearing to allow the Board to deliberate. If the Board finds it cannot complete its deliberations at this meeting, it may continue the deliberations to a specific place, time and date with no additional noticing required provided the Chair makes a formal announcement before voting to continue the deliberations. At the conclusion of the deliberations a motion shall be made, seconded, and so voted to grant or deny with reasons, the remedy sought.

13.6 Decisions

The Board shall decide to approve or deny the application. Members will be polled as to the application meeting the criteria for each item that is before the Board. Motions to take any action on the application shall state the findings upon which the motion is based. The denial of a plan shall be accompanied by a written explanation stating the specific reasons for the denial, and the criteria (if applicable) which have not been met.

All decisions shall be announced verbally by the Chair at the meeting, a Notice of Decision shall be issued and recorded as applicable and will be placed in the applicant's file. They shall be made available for public inspection within 5 business days after the decision is made, as required by RSA 676:3.

13.8 Revision of Plan

Substantial revision of the plan by the applicant, other than in response to requests from the board, will be treated as a new application and necessitate withdrawal by the applicant or denial of the original plan.

14.0 Decisions Final

The decisions of the Board shall become final on the date the decisions are made, and duly recorded in the official minutes by the Administrative Assistant. Any Interested party may, within 30 days, request a rehearing on the decision.

15.0 Waivers

Any portion of these Rules of Procedure may be waived in such cases where, in the opinion of a majority of the Board, strict conformity would pose a practical difficulty to the applicant and a waiver would not be contrary to the spirit and intent of the rules.

16.0 Rules of Procedures Revisions

These rules of procedure may be revised by first posting such revisions, along with the usual postings of agenda and business, followed by a majority vote of the members present at a regularly scheduled meeting. (RSA 676:1)

17.0 Final Posting of Rules and Procedures

These rules of procedure, once enacted, shall be filed with the Newton Town Clerk, and will be available for public inspection. (RSA 676:1)

APPENDIX

A

ZBA Procedure for all Preliminary Reviews

1. The chairperson shall open the preliminary review; state the time.
2. The chair shall make a brief statement of the general principles involved in the process and explain the purpose of the preliminary review.
3. The chair shall outline the rules governing the preliminary review.
4. Announcement by the A.A. of the application(s) and the stated particulars.
5. Petitioner's presentation of the application. Board members may ask clarifying questions.
6. The chair shall summarize the application noting any deficiencies for the record.
7. If the board finds that they cannot conclude the preliminary review within the time available, they may vote to continue to a specific time, place, and date. so long as they make the formal announcement before voting to continue the preliminary review and the applicant is willing to the continuance.
8. A motion shall be made and seconded move the application to a public hearing on a specific date.
9. The A.A. shall work with the applicant to rectify any deficiencies.
10. The A.A. shall draft abutter notices and Legal notices ensuring they are submitted in a timely manner.

APPENDIX

B

ZBA Procedure for all Public Hearings

1. The chairperson shall call the hearing to order; state the time the hearing started; and request the A.A. to take the roll of the board so that a quorum will be shown on the records.
2. The chair shall make a brief statement of the general principles involved in the process and explain the purpose of the public hearing.
3. The chair shall outline the rules governing the hearing.
4. Announcement by the A.A. of the application and the stated particulars.
5. Report by the A.A. of how notice was given.
6. Petitioner's presentation of the application. Board members may ask clarifying questions.
7. Testimony by those in favor of the application. Each speaker shall identify themselves, state their address and how they are involved with the application. Board members may ask clarifying questions.
8. Testimony by those opposed to the application. Each speaker shall identify themselves, state their address and how they are involved with the application. Board members may ask clarifying questions.
9. Rebuttal by the petitioner. Each speaker shall identify themselves, state their address and how they are involved with the application. Board members may ask clarifying questions.
10. Rebuttal by the opposition. Each speaker shall identify themselves, state their address and how they are involved with the application. Board members may ask clarifying questions.
11. The chair shall summarize the application.
12. If anyone wishes to dispute the accuracy of the summary, they shall be given an opportunity to do so.
13. If the board finds that they cannot conclude the public hearing within the time available, they may vote to continue the hearing to a specific time, place and date with no additional notice required so long as they make the formal announcement before voting to continue the hearing.
14. Upon its conclusion, the hearing should be officially closed before the board begins its formal deliberations.
15. The Board of Adjustment shall deliberate on the testimony presented. **The A.A. shall read each criteria and poll the Board Members as to their opinion of the criteria as having been met. The A.A. shall announce results of the poll. (AMENDED NOVEMBER 8TH, 2021)** The reaching a consensus on whether the criteria was or was not met.
16. A motion shall be made and seconded on the granting or the denial with reasons, of the remedy sought.
17. Within 72 hours the A.A. shall draft a Notice of Decision which the chair shall sign.
18. The A.A. shall record the Notice of Decision, as necessary.

APPENDIX C

(ADDED NOVEMBER 8TH, 2021)

ZBA Procedure for Requests for a Rehearing

1. The chair shall make a brief statement of the general principles involved in the process and explain the purpose of the public hearing.
2. The chair shall outline the rules governing the deliberations.
3. Announcement by the A.A. of the original decision and any new evidence offered.
4. The chair shall summarize the case.
5. If anyone wishes to dispute the accuracy of the summary, they shall be given an opportunity to do so.
6. The Board of Adjustment shall deliberate on the testimony presented if it weighs enough to warrant a rehearing of the case
7. A motion shall be made and seconded on the granting or the denial with reasons, of the rehearing sought.
8. Within 72 hours the A.A. shall draft a Notice of Decision which the chair shall sign.
9. The A.A. shall record the Notice of Decision, as necessary.